

EXHIBIT A

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

AVI WAGNER, individually, on behalf :
of all others similarly situated and :
derivatively on behalf of THIRD :
AVENUE TRUST, :
:
Plaintiff, :
v. : Civil Action
: No. 12184-VCL
THIRD AVENUE MANAGEMENT LLC, MARTIN :
J. WHITMAN, DAVID M. BARSE, WILLIAM :
E. CHAPMAN II, LUCINDA FRANKS, :
EDWARD J. KAIER, ERIC RAKOWSKI, :
PATRICK REINKEMEYER, MARTIN SHUBIK, :
CHARLES C. WALDEN, VINCENT J. DUGAN, :
W. JAMES HALL, JOSEPH J. REARDON, :
and MICHAEL BUONO, :
:
Defendants, :
:
and :
:
THIRD AVENUE TRUST, a Delaware :
Business Trust, :
:
Nominal Defendant. :

- - -
Chambers
New Castle County Courthouse
500 North King Street
Wilmington, Delaware
Friday, May 20, 2016
2:00 p.m.

- - -
BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor
- - -

TELECONFERENCE
RE WHETHER BRIEFING OF DEFENDANTS' MOTIONS TO DISMISS
SHOULD BE BIFURCATED AND THE COURT'S RULING

CHANCERY COURT REPORTERS
500 North King Street
Wilmington, Delaware 19801
(302) 255-0521

1 APPEARANCES: (via telephone)

2 JOEL FRIEDLANDER, ESQ.
3 JEFFREY M. GORRIS, ESQ.
Friedlander & Gorris, P.A.

4 -and-

5 LAWRENCE P. EAGEL, ESQ.
of the New York Bar
Bragar Eagel & Squire, P.C.
6 for Plaintiff

7 KEVIN R. SHANNON, ESQ.
8 BERTON W. ASHMAN, ESQ.
JACLYN C. LEVY, ESQ.
9 Potter, Anderson & Corroon LLP

-and-

10 JONATHAN M. WAGNER, ESQ.
of the New York Bar
11 Kramer, Levin, Nr
for Defendants Third Avenue Management
12 LLC, Michael Buono, Vincent J. Dugan,
W. James Hall, and Joseph J. Reardon

13
14 KEVIN M. COEN, ESQ.
Morris, Nichols, Arsht & Tunnell LLP

15 -and-

16 RACHEL PENSKI FISSELL, ESQ.
of the New York Bar
Milbank Tweed Hadley & McCloy LLP
17 for Defendant David M. Barse

18 LISA A. SCHMIDT, ESQ.
19 RYAN P. DURKIN, ESQ.
Richards, Layton & Finger, P.A.

20 -and-

21 JONATHAN E. RICHMAN, ESQ.
of the New York Bar
Proskauer Rose LLP
22 for Defendant Martin J. Whitman

23 Continued

1 APPEARANCES CONTINUED:

2 A. THOMPSON BAYLISS, ESQ.

3 Abrams & Bayliss LLP

-and-

4 ROBERT A. SKINNER, ESQ.

of the Massachusetts Bar

5 Ropes & Gray LLP

6 for Defendants William E. Chapman II,
7 Lucinda Franks, Edward J. Kaier, Eric
8 Rakowski, Patrick Reinkemeyer, Martin
9 Shubik, Charles C. Walden, and Nominal
10 Defendant Third Avenue Trust

11 - - -

1 THE COURT: Good afternoon, everyone
2 this is Travis Laster speaking. Who is here for the
3 defendants?

4 MR. SHANNON: Good afternoon,
5 Your Honor. Kevin Shannon, Potter Anderson. With me,
6 Bert Ashman and Jackie Levy. And my co-counsel --

7 THE OPERATOR: Joining the meeting...

8 MR. SHANNON: -- of Kramer Levin for
9 Third Avenue Management LLC, Michael Buono, Vincent
10 Dugan, James Hall, and Joseph Reardon.

11 THE COURT: Great.

12 MR. BAYLISS: And, Your Honor, it's
13 Tom Bayliss on behalf of the trust and the independent
14 trustees. With me on the line is Rob Skinner of Ropes
15 & Gray who has been admitted pro hac vice. To the
16 extent the Court has questions for the trust or the --

17 THE OPERATOR: Joining the meeting...

18 MR. BAYLISS: -- Mr. Skinner plans to
19 address them.

20 MR. SKINNER: Yes, I'm on.

21 THE COURT: Great. Thank you.

22 MS. SCHMIDT: Good afternoon, Your
23 Honor. Lisa Schmidt from Richards, Layton & Finger.
24 I'm here with Ryan Durkin in my office. Also on the

1 line is Jonathan Richman from Proskauer, and we are
2 counsel to Mr. Whitman.

3 THE COURT: Okay.

4 MR. COEN: And good afternoon,
5 Your Honor. This is Kevin Coen at Morris Nichols on
6 the line on behalf of defendant David Barse. And with
7 me on the line is my co-counsel from Milbank Tweed,
8 Rachel Fissell.

9 THE COURT: Is that everyone from the
10 defense side?

11 All right. Hearing no one else, who
12 is on for the plaintiff?

13 MR. FRIEDLANDER: Good afternoon, Your
14 Honor. Joel Friedlander and Jeffrey Gorris from
15 Friedlander & Gorris, and also Larry Eagel from Bragar
16 Eagel & Squire. Perhaps he has some colleagues with
17 him. I'm not sure.

18 THE COURT: That's good enough.

19 Mr. Shannon, do you want to take it
20 away?

21 MR. SHANNON: Your Honor, with your
22 permission, Mr. Wagner will speak on behalf of the
23 management defendants.

24 THE COURT: Okay.

1 MR. SHANNON: Thank you.

2 MR. WAGNER: Your Honor, thank you.

3 Maybe I should -- since we have eight sets of lawyers
4 on the call, maybe I should just clear up some
5 potential conclusion at the outset. My name is
6 Mr. Wagner, obviously not related to the plaintiff,
7 Avi Wagner, who is actually a class-action plaintiffs'
8 lawyer in California. I think so that no one gets
9 confused, we should just refer to him as "the
10 plaintiff."

11 So I don't want to address the merits
12 of the forum issue. What I want to focus on is why
13 briefing should be bifurcated. That's what I
14 understand the purpose of this call is.

15 I start with the premise and I think
16 we all start with the premise that issues with respect
17 to the Focused Credit Fund and Third Avenue should be
18 resolved in an orderly fashion in a way that maximizes
19 judicial efficiency and minimizes the prospect of
20 inconsistent judgments.

21 And in that respect, the plaintiff,
22 who is opposing bifurcating briefing, has a very big
23 hurdle. The Southern District judge who is presiding
24 over this case, Judge Castel, has before him all the

1 Focused Credit Fund and all the Third Avenue
2 Management-related litigation. He's got the
3 derivative action and he's got the class actions. And
4 he is going to decide the issues that the plaintiff in
5 this case wants Your Honor to decide.

6 And on top of that, Judge Castel has
7 made clear that he wants all the derivative claims
8 concerning the funds to proceed through the one action
9 that was filed, the Engel case, and he wants all class
10 actions to proceed in a consolidated fashion, as he's
11 named a lead plaintiff and a lead counsel.

12 So what the plaintiff is asking for
13 here has significant implications. It has
14 implications for judicial efficiency, implications for
15 comity, and implications with respect to the issue of
16 inconsistent judgments.

17 And I do note that the Court in
18 California has already recognized the primacy of the
19 New York forum.

20 So with that as a background, before
21 the parties -- and, again, we have eight sets of
22 lawyers on this call -- before all of us are put to
23 the burdens of duplicative briefing on issues that are
24 clearly going to be briefed in New York and decided in

1 New York, and before we even implicate the prospect of
2 inconsistent judgments, we ask as a matter of
3 efficiency and comity that the Court address in the
4 first instance only the issue of whether this case
5 should go forward in Delaware, which is a forum issue.

6 And I note in this respect, when the
7 plaintiff was inserting himself in the New York
8 action, when he wrote a letter to Judge Castel on
9 March 4 -- and that was attached as an exhibit to
10 Mr. Shannon's letter of May 6 -- his counsel and
11 himself noted in the letter that "there will likely be
12 motion practice as to venue, consolidation, and
13 appointment of lead plaintiff counsel."

14 So here we are, although a lead
15 derivative plaintiff has, in effect, already been
16 appointed in New York, but given his statement, it
17 couldn't come as a surprise that we're asking to
18 address the venue question first.

19 We are prepared to brief that issue
20 very promptly, and we would hope that briefing on that
21 issue could be completed promptly before Your Honor.
22 And, again, we ask as a matter of judicial efficiency,
23 comity, and avoiding inconsistent judgments, that we
24 go forward with that issue first.

1 Thank you.

2 THE COURT: Anyone else of the myriad
3 defense counsel want to speak?

4 All right. Mr. Friedlander?

5 MR. FRIEDLANDER: Good afternoon, Your
6 Honor.

7 If I could spend about a minute, not
8 more than a minute, on just the background here of the
9 substance. This is a class and derivative action
10 arising out of the failure of a mutual fund. And it's
11 the first of its kind since 2008. And the failure of
12 an open-end mutual fund, it's not supposed to happen.
13 Mutual funds are supposed to be liquid so they can
14 promptly satisfy redemption, and that's why there are
15 illiquidity limits.

16 We conducted a books and records
17 inspection pursuant to the Delaware Statutory Trust
18 Act, and that inspection revealed information to us
19 which allowed us then to do some more digging to
20 discover that the trustees and officers had approved
21 overvaluations of illiquid securities and that they
22 did so in an apparent effort to forestall a run on the
23 fund.

24 And that plan didn't work. The

1 redemptions continued. So the fund was left with
2 overvalued illiquid securities that could not be
3 liquidated at prices that would allow for additional
4 redemptions to be redeemed at par.

5 Now, the first-filed New York
6 plaintiff did not seek books and records. He did not
7 even sue the outside trustees. He mistakenly sued all
8 the officers and alleged that the officers and the
9 board were the same people and alleged demand
10 futility.

11 Then, at some point, he figured out
12 that he had sued the wrong people. He dropped all the
13 officers except for two and then added in the actual
14 trustees. So he fixed who the defendants were but he
15 didn't fix his strategy. He just kept plowing
16 forward.

17 Even when he sued in state court, he
18 allowed the defendants to remove to federal court even
19 though he had a ready objection that the New
20 York-forum defendants should not -- you know, were not
21 entitled to remove to federal court. He just allowed
22 them to do it. And he did that in a document that
23 named himself as an adequate representative and a lead
24 plaintiff in the only action that was then pending.

1 Now, you've heard from the defendants
2 that -- this is in their letter and today. They talk
3 about alleviating the burden on the courts of having
4 to brief the same 23.1 issue in two courts and
5 avoiding a burden on this Court of deciding an issue
6 that the New York federal court will soon decide.

7 They've said in their letter -- they
8 said today that they're ready to move promptly on the
9 motion to stay or dismiss. Interestingly, in their
10 letter of May 6th, Your Honor, they wrote that they
11 would be ready to file an opening brief on stay or
12 dismissal no later than May 19, 2016, which is
13 yesterday. So they're willing to move promptly but
14 not as promptly as they originally promised.

15 In their letters on the merits to the
16 federal judge in New York, they said they wanted to
17 brief the Rule 23.1 motion by itself, reserve all
18 their arguments for their other grounds for dismissal,
19 because of the strength of their demand futility
20 argument, their objections to demand futility.

21 Now, this is not in any of the letters
22 before the Court, but since the correspondence to Your
23 Honor, the plaintiff filed a letter in the Southern
24 District where he decided to rest on his pleading.

1 And, basically, he's relying on lots
2 of colorful language more than anything else. He
3 talks about the red flag of the tightening of the
4 fixed-income markets. He talks about two-plus years
5 of gormless, catastrophe-courting decision-making and
6 refers to the twin gargoyles of Rales and Caremark.

7 So the plaintiff -- they have the
8 plaintiff they want, and they want to proceed on 23.1
9 against that plaintiff. But it's not about burden
10 avoidance, because I think it should be plain that the
11 defendants are following the JPMorgan-Walmart
12 playbook. They want to brief Rule 23.1 in the
13 Southern District of New York and then fight the
14 plaintiff to obtain books and records in Delaware.

15 And then we can brief all sorts of
16 esoteric issues of res judicata and adequacy of
17 representation. But there's no reason for this Court
18 to stay its hand in adjudicating substantive issues of
19 Delaware law that go to the merits in favor of later
20 litigating New York law, res judicata or issue
21 preclusion or the due process clause.

22 This is the Court that should apply
23 the Delaware Statutory Trust Act. This is the Court
24 that should apply Delaware demand futility case law.

1 And this is the Court that should interpret the trust
2 instrument of a Delaware statutory trust.

3 And there's no reason why defendants
4 cannot brief all those issues right away. They filed
5 their motion to dismiss on May 5th. They already
6 filed letters in the Southern District of New York
7 outlining their arguments on the merits. And there is
8 no good reason why briefing on the merits should
9 proceed any slower here than it would proceed in
10 federal court.

11 There is an upcoming conference in the
12 Southern District on June 1. We -- the defendants
13 here can get moving right now, and we can join issue
14 promptly. And I can assure the Court that plaintiffs
15 will do their part to make sure these issues are
16 presented promptly to Your Honor on whatever variety
17 of motions they want to press.

18 THE COURT: Here's a question for
19 Mr. Wagner, the lawyer.

20 Is there a schedule yet for briefing
21 the 23.1 motion in New York?

22 MR. WAGNER: No, there is not.

23 THE COURT: This is a question back
24 for Mr. Friedlander.

1 So I agree with you that the
2 defendants are following the Walmart-JPMorgan
3 playbook. It's pretty obvious. And I don't say that
4 to criticize them. The defendants want to get out of
5 litigation, and the best way to do it is to fight the
6 weak plaintiff.

7 I was intrigued by the fact that one
8 of the arguments this plaintiff made was the idea that
9 the Delaware Court of Chancery action would be
10 transferred as if it were a federal case and
11 consolidated with New York on that basis.

12 So it's consistent with what you're
13 saying in terms that they have the plaintiff they want
14 and the allegations they want; and, again, that's good
15 for them.

16 This whole system of multi-forum
17 litigation, for reasons that I went into at probably
18 too great a length in Pyott, creates a lot of systemic
19 dysfunction. It's certainly true that things should
20 be resolved in one forum and at one time, but it
21 doesn't follow from that, at least I don't think, that
22 they should necessarily be followed under a system
23 that incentivizes the filing of a fast complaint by a
24 weak plaintiff so that defendants have the high

1 ground. The defendants may well deserve the high
2 ground, but they ought to deserve the high ground
3 based on a fair procedural posture, not these sort of
4 hydraulic dynamics that forge the fast filing of a
5 weak complaint.

6 All this is background to say,
7 Mr. Friedlander, let's assume that the defendants are
8 right, because they probably are. Given the way this
9 fellow has proceeded, he probably does have an
10 extremely weak complaint for purposes of demand
11 futility.

12 If the defendants win in New York, as,
13 presumably, they expect to do, that still comes down
14 and brings a stop to this action and shifts us from
15 the nuances of the Trust Act into the vagaries of
16 collateral estoppel and adequacy of representation and
17 constitutional due process.

18 So what am I saving by letting you go
19 ahead if -- I mean, assume that you're right, and
20 assume that the defendants, having mentioned
21 inconsistent rulings however many times -- I think
22 Mr. Wagner probably mentioned it six or seven times
23 during his presentation. So Mr. Wagner apparently
24 thinks that your complaint, with the benefit of 220,

1 is likely to win and that the weak plaintiff in New
2 York, who didn't use 220, is likely to lose. That's
3 probably why the inconsistent rulings are happening,
4 unless he has some different -- I won't comment on the
5 nature of those concerns.

6 So, anyway, let's assume he's right.
7 Won't we be shifting over to collateral estoppel
8 issues anyway?

9 MR. FRIEDLANDER: Well, first of all,
10 I think it depends on the timing. First -- maybe this
11 will all be new practice areas for all of us about the
12 more we learn about collateral estoppel and due
13 process and adequacy and what stage and what New York
14 law means on all this, but I would think it would
15 matter which decision came out first.

16 Because if Your Honor rules and says
17 demand futility is established, then I don't think it
18 logically follows that the federal court will just --
19 well, I don't know if we can predict what the federal
20 court will do or what the plaintiff in New York will
21 do. I mean I guess --

22 THE COURT: Here's why I'm wondering.
23 My reaction to that is that that's an interlocutory
24 ruling, and so it's not binding to the extent that a

1 final judgment of dismissal is.

2 A final judgment of dismissal under
3 New York law is binding. And, hence, essentially
4 what, at least as I understand it, we're facing is a
5 one-way ratchet where if this case hypothetically goes
6 forward, as Mr. Wagner appears to fear, then as soon
7 as he wins in New York, as he appears to expect, we're
8 right back in the same place of briefing the
9 collateral estoppel issues.

10 What we don't have is a situation
11 where, if, as Mr. Wagner seems to expect, I rule in
12 your favor on your good complaint, that that has any
13 effect on the New York action. It's essentially just,
14 for the New York action's purposes, like an advisory
15 opinion.

16 MR. FRIEDLANDER: Well, there's a lot
17 of ways this could shake out. For instance -- well,
18 first of all, we don't know what -- forget ruling on
19 the merits, Your Honor. Before we get to ruling on
20 the merits, it's unclear what's going to happen in
21 federal court on June 1st in terms of scheduling and
22 going forward on their motions. And that very well
23 may be informed by how Your Honor rules today just on
24 what kind of schedule we enter into now.

1 The federal court has the power under
2 Landis to control its own docket. It might decide it
3 doesn't make sense for it to be ruling on the Rule
4 23.1 issues on its own.

5 So I guess I would be reluctant to
6 say, you know, how it's going to move and on what time
7 frame. I know motions to dismiss in federal court
8 here can take some time to get decided. We don't know
9 if the federal judge in the Southern District is going
10 to hear the 23.1 in isolation, as the defendants are
11 asking, or whether he'll want full briefing on all
12 issues. So that's why I'm saying there's a lot of
13 different ways this thing could go.

14 But I don't want to avoid Your Honor's
15 question. I see the point Your Honor is raising
16 about, you know, should it happen and the case gets
17 dismissed in New York, then we may end up having to
18 deal with the issues that Your Honor is referring to,
19 but I don't think that's necessarily the case.

20 MR. WAGNER: Your Honor, it's
21 Mr. Wagner, not the plaintiff. May I respond briefly?

22 THE COURT: Hold on a second. I was
23 trying to think if I had another question for
24 Mr. Friedlander. And I do.

1 Mr. Friedlander, so, essentially,
2 again, remembering back to Pyott, what happened there,
3 as I'm sure you know, though you weren't involved, but
4 the California court ruled, and then I had the more
5 thorough complaint in front of me, and we litigated
6 the Delaware motion to dismiss on that basis and dealt
7 with the collateral estoppel issues. And then, given
8 the ruling in that case, which would have to be
9 different now, given the Supreme Court's ruling,
10 nevertheless, given the difference with that case, we
11 then went to 23.1.

12 Why isn't the solution in this case to
13 sequence it that way; see what happens in New York.
14 If New York goes the plaintiff's way, well, all well
15 and good. It all gets litigated in New York and, you
16 know, we don't even have to deal with anything. If it
17 gets dismissed in New York, as the defendants predict,
18 then we would do the Walmart analysis. And if you
19 overcome the Walmart analysis, we would do the 23.1 if
20 we got there. You would still have the same set of
21 steps to go through. They'd just be sequenced
22 differently.

23 Why doesn't that -- I mean, it doesn't
24 protect you in the sense that you're at risk of being

1 precluded by the New York judgment, but if you were in
2 that -- at risk of that anyway, why is there an
3 advantage in us doing things now rather than later?

4 Is it just to affect, potentially, how
5 things unfold in New York?

6 MR. FRIEDLANDER: Well, I think that's
7 important. I don't want to understate that at all.

8 As I recall, in Pyott, the way it
9 turned out, the California plaintiff ended up doing a
10 220, and then their case went forward. The Ninth
11 Circuit allowed it to go forward and followed Your
12 Honor's -- basically verbatim, a lot of Your Honor's
13 ruling on the merits, and allowed the case to go
14 forward.

15 I don't know what the Zamansky firm --
16 how they will react. It's funny that -- I mean, it's
17 interesting that they're resting on their complaint,
18 even though we have a lot of public allegations that
19 they could have possibly added to their complaint if
20 they wanted to make their complaint -- bolster it.
21 They've studiously avoided even entering -- talking
22 about valuation at all in their complaint.

23 So I guess I'm reluctant to say Pyott
24 is a good playbook because things can turn out

1 different ways, and it also just strikes me that the
2 orderly way to proceed would be for the Delaware court
3 that has the Delaware issues right before it to rule
4 on that, and that could very well inform how a federal
5 court trying to predict Delaware law would look at
6 those same issues.

7 THE COURT: All right. Well, that's
8 helpful.

9 Mr. Wagner, now back to you.

10 MR. WAGNER: Just on that latter
11 point, that assumes that this Court is going to decide
12 before Judge Castel. And I don't think anyone can
13 predict what would happen first, but I think the mere
14 fact that we're having this discussion and that you're
15 raising these issues highlights the importance of the
16 forum issue.

17 I would also note that these issues
18 could have been avoided had the plaintiff in this case
19 followed through in New York and filed a motion to
20 intervene, as he at least alluded to when he wrote to
21 the Court on March 4. He had --

22 THE COURT: The irony of you saying
23 that is I also had the Krasner case.

24 MR. WAGNER: That's true.

1 THE COURT: So I happen to know what
2 the response is to that, which is that you all moved
3 to dismiss on the grounds that by intervening, despite
4 you all wanting him to intervene, he has given up any
5 ability to proceed elsewhere. I guess that
6 technically is on the 220 issue, so it's slightly
7 different.

8 MR. WAGNER: Right.

9 THE COURT: But it's not as clear a
10 thing as, you know, everybody gets happy up in New
11 York.

12 MR. WAGNER: Well, I think they might
13 have predicted what the outcome would be, but they
14 have the documents that made their way -- actually,
15 just a few documents that made their way into their
16 complaint before their motion was -- their motion for
17 intervention and their pleading was due.

18 So it's not as if they didn't have a
19 remedy. We're in this morass because they decided to
20 avoid Judge Castel even though they wrote to him in
21 the first instance.

22 So it's just -- it's not -- there are
23 eight firms on this call. How is this in the interest
24 of a fund that's in liquidation?

1 THE COURT: Actually --

2 MR. FRIEDLANDER: Your Honor, I'm
3 assuming it's a rhetorical question.

4 THE COURT: I'm assuming it's a
5 rhetorical question too because there is actually a
6 pretty easy alternative.

7 Do you want to take a crack at
8 answering that for him, Mr. Friedlander?

9 MR. FRIEDLANDER: Sure.

10 The suit is on behalf of the investors
11 or people who got shortchanged. We have other folks
12 who were able to redeem at higher levels than they
13 should have and redeemed amounts they shouldn't have.
14 And this is a way to bring order to a disorderly
15 situation created by the defendants in not properly
16 valuing the securities and not obeying the liquidity
17 limits.

18 THE COURT: All right. I appreciate
19 hearing from everybody. Here's what I'm going to do.

20 I absolutely share the sentiments that
21 were expressed earlier that these types of issues
22 should ideally be resolved in one court. They should
23 be resolved once and for all rather than having
24 multiple cases in different locations. That's

1 absolutely right and I agree with it wholeheartedly.

2 I also don't think that, in terms of
3 any type of ability or competence or anything like
4 that, that this Court, as a hypothetical matter, has
5 any advantage over the U.S. District Court or that the
6 U.S. District Court is in any way less able to handle
7 this. I don't personally know Judge Castel but I'm
8 sure he's a very qualified person and, certainly, he
9 is in one of the courts that's widely recognized as
10 one of the most sophisticated in the country.

11 The only advantage that this Court
12 could possibly have is the one that our Chief Justice
13 has mentioned repeatedly, which is the fact that we do
14 a lot of Delaware law, and so by dealing a lot with
15 Delaware law, we develop familiarity with Delaware
16 law.

17 We do have here the situation where
18 it's not a corporation. It's a business trust. And a
19 statutory business trust is not something that has
20 come up frequently in terms of Delaware case law. So
21 this is an area where one is going to be potentially
22 considering new issues.

23 Taking all that into account, and
24 because of the manner in which things have

1 proceeded -- not in terms of the judicial proceedings
2 but in terms of the plaintiff's proceedings -- I think
3 that Mr. Friedlander has raised good arguments as to
4 why the books and records that he obtained and the
5 method that he followed could make a substantial
6 difference in potentially how these issues of first
7 impression under Delaware law as to a business trust
8 should be addressed.

9 What that also makes me think is that
10 there isn't value in me considering this case twice:
11 once on the motion to stay and a second time in terms
12 of the motion to dismiss.

13 Balanced against that, notwithstanding
14 Mr. Wagner's arguments, I don't see a lot of
15 incremental burden for the defendants. The defendants
16 are going to brief these issues regardless. They're
17 going to write the briefs. I really don't think
18 they're going to write very different legal analyses
19 for the Southern District than they are going to write
20 for this Court. So there may be eight firms on the
21 line and however many different lawyers, but it's not
22 going to be a lot of extra work to put the same
23 citations in your New York brief as you do here. So
24 rather than having two separate briefing sequences,

1 we'll have one.

2 Also, it's clear to me that if the New
3 York Court ultimately does enter a ruling that is
4 final, we're going to have to take that into account
5 here, so we may very well end up shifting to all the
6 types of issues that Mr. Friedlander has adverted.
7 But at least at this preliminary stage, I'm not going
8 to balkanize the motions to dismiss. You all can
9 brief them once, and we'll all get together once on
10 both dismissal in favor of another forum and in terms
11 of the merits allegations.

12 Let's do three weeks for the opening
13 brief, three weeks for the answering brief, and three
14 weeks for the reply brief. Then I'll see you all for
15 a hearing.

16 Thank you all for getting on the
17 phone. I appreciate it. Have a good day.

18 MR. SHANNON: Thank you, Your Honor.

19 MR. FRIEDLANDER: Thank you, Your
20 Honor.

21 MS. SCHMIDT: Thank you, Your Honor.

22 (Conference adjourned at 2:30 p.m.)

23 - - -

24

CERTIFICATE

I, JEANNE CAHILL, RDR, CRR,
Official Court Reporter for the Court of Chancery of
the State of Delaware, do hereby certify that the
foregoing pages numbered 3 through 26 contain a true
and correct transcription of the proceedings as
stenographically reported by me at the hearing in the
above cause before the Vice Chancellor of the State of
Delaware, on the date therein indicated.

IN WITNESS WHEREOF I have hereunto set
my hand at Wilmington, Delaware, this 23rd day of May,
2016.

/s/ Jeanne Cahill

Jeanne Cahill, RDR, CRR
Official Chancery Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter